



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-00-084-52213

Office: Vermont Service Center

Date:

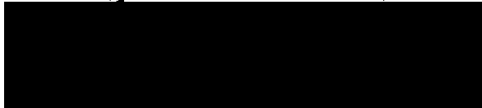
DEC 11 2000

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data needed to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as an associate minister. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The director also found that the petitioner had failed to establish its ability to pay the proffered wage.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m) (1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on January 21, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from January 21, 1998 to January 21, 2000.

The petitioner submitted a letter from Reverend [REDACTED] pastor at the Baptiste Church of Grace in [REDACTED] who indicated that the beneficiary "was the chief pastor of the congregation from September 1988 to April 1999." The petitioner submitted a photocopy of a certificate of ordination awarded to the beneficiary on August 20, 1984. On June 19, 2000, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, counsel requested an extension of 60 days to respond.

On appeal, counsel argues that the petitioner submitted sufficient evidence to document the beneficiary's work experience during the qualifying period. Counsel submits photocopies of three pay receipts issued to the beneficiary by the Eglise Evangelique Baptiste de la Grace. These receipts are dated in January, February, and March 1999.

The evidence submitted in support of this petition does not document the beneficiary's purported employment as a chief pastor throughout the two-year period prior to qualifying. The pay receipts submitted on appeal could have been completed at any time; therefore, they cannot be considered contemporary evidence of the beneficiary's purported employment. The petitioner has not submitted any documentary evidence (such as cancelled pay checks or dated bank deposits) to establish the beneficiary's receipt of a salary from his church in [REDACTED]. Further, the issuance of a certificate of ordination is not evidence of continuous work experience as a minister. Accordingly, the petitioner has not established that the beneficiary was continuously engaged in a religious occupation from January 21, 1998 to January 21, 2000. The objection of the director has not been overcome on appeal. As such, the petition may not be approved.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that it will pay the beneficiary an annual salary of \$22,000.00. On June 19, 2000, the director requested that the petitioner submit additional information. In response, counsel requested an extension of 60 days to respond. On appeal, counsel argues that "the Church has been in the position to pay [the beneficiary's] salary at the time of filing and into the foreseeable future." The petitioner submits a self-prepared budget for 1998, 1999, and 2000. It is noted that there is no salary for an "associate minister" included in the budget. The evidence submitted in support of this petition is not sufficient. 8 C.F.R. 204.5(g)(2) provides a list of documents that may be submitted to support a petitioner's claim to be able to pay a wage. The petitioner has not submitted any of these documents. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

Beyond the decision of the director, the petitioner has failed to document that it is a qualifying, tax-exempt religious organization as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Further, the petitioner has failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.